

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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JENYSIA MILLER,

Plaintiff(s),

-against-

KAREN MUTO AND GARY P. MUTO,

Defendant(s).

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Trial by Jury Demanded  
of All Issues

**VERIFIED ANSWER**

Index No. 07 CIV 9591

The defendant(s), CAREN MUTO S/H/A KAREN MUTO AND GARY P. MUTO, answering the Complaint of the plaintiff(s) herein:

AS AND FOR THE FIRST CAUSE OF ACTION

FIRST: Admits each and every allegation in the paragraphs of the complaint designated as follows: "2", "5" and "9".

SECOND: Denies each and every allegation in the paragraphs of the complaint designated as follows: "11", "12" and "14".

THIRD Denies any knowledge or information sufficient to form a belief as to the truth of any of the allegations contained in the paragraphs of the Complaint designated as follows: "1", "3", "4", "6", "7", "8" and "10".

FOURTH: Denies each and every allegation contained in the paragraphs of the complaint designated as follows, and refers all questions of law to the Court: "13".

AS AND FOR A FIRST SEPARATE, AND COMPLETE AFFIRMATIVE DEFENSE

FIFTH: That whatever damages, personal injury, injury to property, or wrongful death plaintiff(s) and/or plaintiff's decedent may have sustained, if any, at the time and place alleged in the Complaint herein, or any amendments thereto, if not caused in whole by the carelessness, negligence, assumption of risk and culpable conduct of the plaintiff(s) and/or

plaintiff's decedent, were then caused by the carelessness, negligence, culpable conduct and want of care on the part of the plaintiff(s) and/or plaintiff's decedent; and if any carelessness, negligence or culpable conduct upon the part of defendant(s) caused or contributed to such injury or wrongful death and damages of plaintiff(s) and/or plaintiff's decedent, such on the part of defendant(s) bore only a slight proportion to the entire negligence and culpable conduct attributable to both plaintiff(s) and/or plaintiff's decedent in causing the accident and any damages sustained.

AS AND FOR A SECOND SEPARATE AND COMPLETE AFFIRMATIVE DEFENSE

SIXTH: That by entering into the activity in which the plaintiff, JENYSIA MILLER, was engaged at the time of the occurrence set forth in the Verified Complaint, said plaintiff knew the hazards hereof and the inherent risks incident thereto and had full knowledge of the dangers thereto; that whatever injuries and damages were sustained by the plaintiff herein as alleged in the Verified Complaint arose from and were caused by reason of such risks voluntarily undertaken by the plaintiff in his/her activities and such risks were assumed and accepted by him/her in performing and engaging in said activities.

AS AND FOR A THIRD SEPARATE, AND COMPLETE AFFIRMATIVE DEFENSE

SEVENTH: Plaintiff failed to take all reasonable measures to reduce, mitigate and/or minimize the damages alleged.

AS AND FOR A FOURTH SEPARATE, AND COMPLETE AFFIRMATIVE DEFENSE

EIGHTH: Plaintiff('s/s') recovery, if any, shall be reduced by the amount of any collateral source payments received, in accordance with CPLR 4545.

AS AND FOR A FIFTH SEPARATE, AND COMPLETE AFFIRMATIVE DEFENSE

NINTH: The above-entitled action is subject to the provisions of CPLR Article 16.

AS AND FOR A SIXTH SEPARATE, AND COMPLETE AFFIRMATIVE DEFENSE

TENTH: If it is determined that the plaintiff(s), failed to use available seat belts, defendant(s), pleads said fact in mitigation of damages.

**WHEREFORE**, defendant(s), KAREN MUTO AND GARY P. MUTO, demands judgment against plaintiff(s) dismissing the Verified Complaint herein as against the defendant, together with the costs and disbursements of this action.

Dated: Hauppauge, New York  
October 29, 2007

Yours, etc.,  
**DESENA & SWEENEY, LLP**  
By:

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SHAWN P. O'SHAUGHNESSY, ESQ. (SO-6081)  
Attorneys for Defendant(s)  
CAREN MUTO S/H/A KAREN MUTO AND  
GARY P. MUTO  
1383 Veterans Memorial Highway  
Suite 32  
Hauppauge, New York 11788  
631-360-7333  
File No.: 07SF0184B-ICC  
Claim No.: 07-3085-555

STATE OF NEW YORK, COUNTY SUFFOLK

The undersigned, an attorney admitted to practice in the Courts of New York State, shows: affirmant is SHAWN P. O'SHAUGHNESSY, ESQ. (SO-6081), an attorney in the law firm of **DeSENA & SWEENEY, LLP.**, attorney of record for CAREN MUTO S/H/A KAREN MUTO AND GARY P. MUTO, in the within action; affirmant has read the foregoing ANSWER and knows the contents thereof; the same is true to affirmant's own knowledge, except as to the matters therein stated to be alleged on information and belief and that as to those matters affirmant believes it to be true. This verification is made by affirmant and not by CAREN MUTO S/H/A KAREN MUTO AND GARY P. MUTO, in that he is not within the County where undersigned has his office.

The grounds of affirmant's belief as to all matters not stated upon affirmant's knowledge are as follows: investigations made relative to the subject matter, information and records, in his file.

The undersigned affirms that the foregoing statements are true, under the penalties of perjury.

Dated: Hauppauge, New York  
October 29, 2007

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SHAWN P. O'SHAUGHNESSY, ESQ. (SO-6081)

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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**AFFIDAVIT  
OF  
SERVICE**

Index No. 07 CIV 9591

STATE OF NEW YORK, COUNTY OF SUFFOLK

Siobhan K. Geosits, being duly sworn, deposes and says: deponent is not a party to the action, is over 18 years of age and resides at Selden, New York.

On \_\_\_\_\_ deponent served the within **VERIFIED ANSWER** upon the attorney(s) and/or the parties listed herein, at the address(es) designated by said attorney(s) for that purpose by depositing a true copy of same enclosed in a post-paid properly addressed wrapper, in - a post office - official depository under the exclusive care and custody of the United States Postal Service within the State of New York.

Della, Mura & Ciacci, LLP  
Attorney(s) for Plaintiff(s)  
977B Allerton Avenue  
Bronx, NY 10469  
(718) 405-1500

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Siobhan K. Geosits

Sworn to before me this \_\_\_\_\_ day  
of \_\_\_\_\_, 2007

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NOTARY PUBLIC